IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 29 OF 2004

Phillip Silveira
House No.10,
Dongorim, Nuvem,
Post Majorda,
Salcete-Goa. ... Petitioner

versus

1. State of Goa
   through Chief Secretary
   Panaji, Goa.

2. Inspector General of Prisons
   Collectorate, North Goa
   Panaji, Goa.

3. The Superintendent of Prisons
   Central Jail Aguada.

Mrs. Asha A. Desai, Advocate for the Petitioner.

Mr. H. D. Naik, Additional Government Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 25TH JUNE, 2004.

ORAL JUDGMENT

The Petitioner is the father of the prisoner Caitano Silveira, who is undergoing a sentence of four years Rigorous Imprisonment from 10th February, 2003, having been convicted and sentenced under Section 304(II) of the Indian Penal Code.

2. Several applications filed by the Petitioner to be released on parole under the Prisons(Goa, Daman & Diu Furlough & Parole) Rules, 1968 came to be rejected by the learned Inspector General of Prisons. The first, application was rejected by Order dated 14th July, 2003 and the third was rejected by Order dated 8th January, 2004.

3. The Petitioner then made another application to release his son on parole for 45 days on the ground that his wife was mentally depressed and if, the said prisoner was released, it would help her in improvement of her sickness. The Police upon enquiries conducted, reported that the mother of the said prisoner was slightly under depression but the Petitioner and another son and daughter were taking due care of her. In his Order dated 9th April, 2004, the learned Inspector General of Prisons stated that grant of parole to the said prisoner had to be rejected in public interest on account of:-

(a). The mother of the prisoner though under mental depression, is taken care by her husband, son and daughter.

(b). Since the prisoner is undergoing imprisonment on account of murder over an issue related with the election matter, the

> prisoner may again get himself involved on account of ensuing Lok Sabha Election and may indulge in breach of peace and other criminal acts, if released on parole.

4. Mrs. Asha A. Desai, learned Counsel on behalf of the Petitioner has submitted as regards ground (b) that the elections had come and gone and that even otherwise, the Petitioner was on Bail for a period of eight years during the pendency of the trial. On this aspect, Mr. H. D. Naik, learned Additional Government Advocate on behalf of the Respondents has conceded that ground (b) no longer subsists.

5. Regarding ground (a), Mrs. Asha A. Desai, learned Counsel has submitted that the mother of the prisoner is undergoing mental depression and, therefore, the said ground is covered by Rule 19 of the aforesaid Rules. In support of the said submission, Mrs. Desai, has placed reliance on a Judgment of this Court dated 29th January, 2004, in Criminal Writ Petition No.2 of 2004(**Mehboob Sayeed** v. **State of Goa and others**).

6. Rule 19 deals with release of prisoners on parole. It provides that a prisoner may be released on parole for such period as the Competent Authority referred to in Rule 18 in its discretion may order, in

cases of serious illness, or by any member of the prisoner's family or of his nearest relatives or for any other sufficient cause(Emphasis supplied).

7. The Petitioner did produce a copy of the Medical Certificate dated 11th February, 2004, which shows that the prisoner's mother who is about 56 years old was attending O.P.D. with a depression disorder which had started after a serious negative event in the family. The Certificate does not mention what was the said negative event in the family, nor does it mention whether it had to do anything with the commission of the offence by the prisoner or his subsequent imprisonment. The Police Report which was submitted to the learned Inspector General of Prisons mentions that the mother of the prisoner was slightly under mental depression but her husband(the Petitioner), son and daughter were taking her due care. As already stated, the Petitioner's son started his imprisonment only on 10th February, 2003 i.e. to say little over a year back but it can be seen that even before completion of six months, the Petitioner has been making efforts to get his son released on parole. The mother of the said prisoner is undergoing slight mental depression, the cause of which is not placed before this Court. The said illness could not be considered as a severe illness or treated as a sufficient cause as

contemplated by Rule 19 of the aforesaid Rules.

8. The case of **Mehboob Sayeed** v. **State of Goa and others**(supra) was a case where the wife of the Petitioner Mehboob had delivered twins and the mother of the said Mehboob because of advance age had become sick and infirm and in the light of the said exigency, this Court ordered the release of the said Mehboob on parole. On facts, the said case is inapplicable to the case at hand.

9. In view of the above, I find that there is no merit in this Petition. Hence, the same is hereby dismissed. Rule is discharged with no order as to costs.

N. A. BRITTO, J.

RD.